Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1979

No. 80-1

ANNA STANTON GREEN,

Petitioner,

vs.

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN, P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, COMMISSIONER OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, AND THE UNITED STATES POST OFFICE, AND THE NEW YORK BANK FOR SAVINGS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether this Court's opinion in *Parham v. J.R.*, 442 U.S. 584 (June 20, 1979) may be lawfully applied by the United States Court of Appeals for the Second Circuit to petitioner, as a 94-year old, alert, able widow, and/or in the circumstances, as petitioner whose complaint was brought and dismissed prior thereto?

2. Whether petitioner has a constitutional right to protection from a state law as written or applied against her by respondents:

(a) To "examine" or "test" her *psyche*, whether defined as soul or mind, against her will, or otherwise replace the rule of law by the rule of pseudo-medicine, called "psychiatry", in violation of the First Amendment;

(b) To take from her, her bank accounts, social security checks, revoked will, and liberty, in violation of the Fourteenth Amendment;

(c) To take from her the earned compensation for her past labor by currently subjecting her to a deprivation of liberty in violation of the Thirteenth and Fourteenth Amendments?

3. Whether petitioner may have redress by an action pursuant to Title 42 U.S.C. §1983, as a deprivation by respondents of her constitutionally secured rights, under color of law, and pursuant to Title 18 U.S.C. §1961, *et seq.* for triple damages from respondents' organized pattern of racketeering against her, under color of law, in violation of the State Penal Code?

4. Whether the opinion of the Court of Appeals for the Second Circuit is made legally invalid by improper procedures including:

(a) Assignment of judges and scheduling of hearing prejudicially by the court's assignment authority;

(b) Irreparably prejudicial striking-out of essential part of appendix of appellant (petitioner), by order of a single judge, the Hon. Walter R. Mansfield, before the appeal was considered;

(c) Disregard by the Hon. Walter R. Mansfield and the Hon. Leonard P. Moore of their obligation under Title 28 U.S.C. §455 to disqualify themselves when their impartiality might reasonably be questioned, as petitioner requested before the hearing of the appeal;

(d) In these circumstances, assessment of double costs to be paid by petitioner's attorney and statement in the opinion that all of this deserves reference to the Bar Association's Grievance Committee for disciplinary action?

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OPINIONS BELOW

The United States Court of Appeals for the Second Circuit by an opinion of the Hons. Sterry R. Waterman, Leonard P. Moore and Walter R. Mansfield, dated January 8, 1980, affirmed the judgment of the United States District Court for the Southern District of New York, by the Hon. Robert W. Sweet, granting summary judgment for respondents and dismissing the complaint. The opinion of the court of appeals is unreported and is reprinted as page 1a of the appendix hereto. The opinion of the district court is unreported.

STATEMENT

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered January 8, 1980, upon a timely petition for a rehearing en banc denied on March 4, 1980 and an extension of time to file a petition for a writ of certiorari to and including July 1, 1980 ordered on May 19, 1980, by Mr. Justice Marshall, Circuit Justice for the Second Circuit.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First, Thirteenth and Fourteenth Amendments of the United States Constitution are involved herein, as are 5 U.S.C. §§701-706, 18 U.S.C. §1961, *et seq.*, 28 U.S.C. §1331, 28 U.S.C. §1339, 28 U.S.C. §1343, 39 U.S.C. §409 and 42 U.S.C §1983.

STATEMENT OF THE CASE

A. Factual Summary

Mrs. Green, a 94-year old widow, clear as a bell, with savings in excess of $100,000 was taken against her wishes to Peekskill, from Manhattan (where she had always lived) by her ex-son-in-law, Bartholomew, (who lives in Peekskill). He was married to her only daughter who died a dozen years ago. A few months before the daughter died, Mrs. Green left her entire estate to her, in a will drafted by Bartholomew's lawyer, and retained by him, that also made Bartholomew her sole heir should her daughter predecease him. About three years ago Bartholomew surreptitiously began an informal attempt to have Mrs. Green declared incompetent in Manhattan, resuming it in Westchester County through a physician, a psychiatrist and a psychologist and then formally petitioned the New York Supreme Court there, by attorney to become her "conservator" under the Mental Hygiene Law as "mentally incapable". Her opposition was clear but ineffectual without an attorney.

When she found an attorney, Gene Crescenzi, she went to state court, called the psychiatrist Moorehead a liar, saying that she had always managed by herself, and neither needed nor wanted a "conservator". On cross-examination, Moorehead testified that his only personal observation for his conclusion of "mentally incapable" was that: she was secretive about her bank accounts; she was slow (but correct) in substracting 7 from 35; and she looked out the window. He further admitted on cross-examination that respectable professional opinion held that his purported expertise, psychiatry, was religion, concealing this from her.

Mrs. Green revoked her will and then asked Mr. Bartholomew's lawyer to return it, (it had been previously represented to have been lost in a burglary or destroyed in a fire) but its return was refused, and it was filed with County Clerk

Pugsley, who also refused her request for its return. State Judge Sirignano admitted that Mrs. Green was "alert" but denied her relief on procedural grounds, assigning her bank accounts and social security checks to Bartholomew.

B. Procedural Summary in the District Court and Court of Appeals

This federal action followed by petitioner in the Southern District of New York, on August 25, 1978, seeking declaratory judgment and injunctive relief from Bartholomew and all co-defendants (plus damages from Bartholomew and private co-defendants' private wrongdoing) to declare unconstitutional Section 77.01 of the New York Mental Hygiene Law, as written or applied, enjoin their use of it against her and direct return of her bank accounts, social security checks and will. Her complaint is of deprivation of her First, Thirteenth and Fourteenth Amendment rights under color of state law, and asks for the statutory redress provided, particularly under 42 U.S.C. §1983, the Civil Rights Act and 18 U.S.C. §1961, *et seq.*, the anti-racketeering law.

The district court heard no testimony before granting respondents' motion for dismissal and summary judgment. But petitioner's motions for an injunction pending appeal, made first in the district court and then in the court of appeals, yielded by answering and reply affidavits substantial proof of her claims.

Moreover, Bartholomew's lawyers are members of a politically-connected law firm, whose partner Robert Blum (Bartholomew's counsel in the federal proceedings) was New York City Mayor Lindsay's assistant when the Honorable Robert W. Sweet (the United States District Judge who dismissed this Green suit) was Deputy Mayor. The personal relationship of Mr. Blum with the Honorable Robert W. Sweet goes back a quarter of a century.

The motion for an injunction of the court of appeals was heard orally by the Hons. Oakes, Moore and Newman, on

September 25, 1979. Judge Moore then openly showed his personal bias or prejudice in favor of the pseudo-medical practice complained of by asking "what do you say to the psychiatric report?" when counsel explained that Mrs. Green was not a basket case, that Bartholomew swore falsely, that she took care of herself completely, walked, talked and even danced; her counsel's reply to that by her First Amendment claim was then ignored. The motion was denied without hearing further argument then, but extending petitioner's time for the appeal brief still to be filed.

The *Parham* case had not even been mentioned, despite ample memoranda of law prepared for the motion.

The *Parham* case was first mentioned in November of 1979, in the answering brief of counsel for Bartholomew, Robert Blum. It was cited only from advanced sheets. The official report first became available in New York City in April 1980, and all the papers, including briefs are still not available here.

Only in December 1979, were the judges who were to hear the appeal on December 7, 1979 identified. Only Judge Moore from the September motion panel, whose bias against Mrs. Green was then so evident, was on the appeal panel. Judge Moore and another judge on the new panel, the Honorable Walter R. Mansfield, were then asked to recuse themselves by petitioner's counsel in view of their long records of decisions hostile to any relief from "psychiatric" oppression; but this request was ignored. Simultaneously, Judge Mansfield, as a single judge, granted a motion by Bartholomew's counsel to strike from the appendix all papers filed in motion for an injunction including substantial proof of petitioner's claim.

At oral argument of the appeal, on December 7, 1979, neither Judge Moore nor Judge Mansfield said a word. Judge Waterman hostilely asked petitioner's counsel "who are you?" when oral argument began, implying that he was not recognized

as Mrs. Green's counsel, ignoring Mrs. Green, then personally present. Bartholomew's counsel urged support for "wisdom of medicine" (his exact words). Mrs. Green's counsel was allowed neither rebuttal nor any constitutional argument.

A two-page opinion, dated January 8, 1980 is personally signed by the Honorable Leonard P. Moore and the Honorable Walter R. Mansfield. The name of the Honorable Sterry R. Waterman is written in "per W.R.M." (Judge Mansfield).

It assesses double costs to be paid by petitioner's attorney, calls the action and appeal frivolous, its characterizations intemperate, all of which it says, deserves reference to the Bar Association's Grievance Committee for disciplinary action.

The record office of the court of appeals has no copy of this opinion, according to inquiry there. It is not a "slip opinion", but what is called there a "summary judgment" and hence unpublished. But a judgment thereon has been filed in the district court, with collection of "double costs" pending thereby, and disciplinary action begun against petitioner's attorney. Review is now sought in this Court from what is obviously not the accepted and usual course of judicial proceedings in the court of appeals.

C. Summary of Issues of this Case

This is a case of first impression. It raises fundamental issues of deprivation of constitutional rights of (1) a senior citizen; (2) a non-believer in a secular religion or cult of the psyche, whether called soul or mind, and from the practice thereof imposed under color of law, by pretended experts called "psychiatrists"; (3) a victim of a pattern of racketeering, under color of law; (4) an aggrieved citizen, suing for relief by one's own freely chosen counsel.

D. Summary of the Constitutional Claim

First Amendment rights are claimed against pseudo-medical tyranny, both for the aged, and for dissenters by conviction, and from *de facto* judicial abdication to, and usurpation by, purported "medical" expertise that is not in fact medical, but concealed theology, which has unconstitutionally elevated the American Medical Association and its affiliate, the American Psychiatric Association, and their professional associates, to a *de facto* privileged class or nobility of usurpers. In consequence, the lawless pseudo-medical tyranny of early American colonial witchcraft laws, and of the more recent dictatorship of Mussolini and Hitler and current Soviet psychiatry, have now become commonplace here. That this is a question of exceptional importance is evident. It is also a question of great practical importance, as shown in the papers for an injunction pending appeal, by the generating of such systematic First Amendment violations, of an inquisitional civil strife (including anti-Semitism and other negative ethnicity) which it is the very purpose of the First Amendment to avoid.

This claim, moreover, is based on what is now known by an educated public and what is long overdue in American law practice: that the 19th century, pseudo-Greek, neologism "psychiatrist" (from Socrates' "healer of the soul") designates those professing and practicing a secular confessional creed and its rites, actually a pastoral religion (not petitioner's) under pseudo-medical pretense.

E. Summary of the Claim for Relief from a Pattern of Racketeering

Relief is now sought from what is actually a white collar crime industry, operated by lawyers and physicians, through past and present political connections. It is comparable (even in price) to the sale of "lettre de cachet" abolished by the French Revolution. Its victims (including many aged persons) denied all

redress, grow more numerous with the increase in practitioners and their government financing. This statutory "pattern of racketeering" claim, was well-researched, in law and in fact, with numerous witnesses ready to testify from personal knowledge thereof, for relief from a growing industry of purported university-diplomaed "expertise" requiring fee-paying submission thereto, under threat of legal disability — the same constituting extortion and larcenous conspiracy, under color of state law.

F. Essential Part of the Opinion in the District Court as Constitutionally Challenged in this Petition

The United States District Court's opinion of May 4, 1979:

> "The court finds that psychiatry is a bona fide aspect of the medical profession. The state of New York and, to this court's knowledge, every other state in the United States, has impliedly concurred in this determination, as evidenced by criminal code provisions that permit, and at times require, the examination of a criminal defendant by a qualified psychiatrist. See *e.g.*, N.Y.C.P.L. Sect. 330.20 (McKinney's Supp. 1978). The Supreme Court has never denied the constitutionality of psychiatric examination nor, to this court's knowledge, has the argument advanced by the plaintiff ever been sustained. In addition, the court notes that to become certified as a psychiatrist, a person must be a licensed physician. *See* The American Board of Psychiatry and Neurology, Inc., Directory of Medical Specialists (17th Ed. 1975-76), at 2174. No such licensing requirement is normally imposed upon religious leaders. *Cf. People v. Cole*, 219 N.Y. 98, 111 (1916)."

G. Essential Part of the United States Court of Appeals Opinion of January 8, 1980 in Reference to this Constitutional Challenge:

> "A careful review of the record, briefs and oral argument disclose that the claim is frivolous and completely without merit. The judicial use of psychiatric examinations and opinions in determining a person's mental fitness, capacity and need for treatment or protective and institutional care is well recognized and widely accepted, provided the subject is accorded due process. *See e.g., Parham v. J.R.*, ___ U.S. ___, 47 U.S.L.W. 4740 (June 20, 1979) . . . .Appellant was examined by a *court-appointed* psychiatrist, appellant Dr. Harry Moorehead, who confirmed the view of Dr. Stuart Pines, that appellant is suffering from a deteriorating mental condition rendering her unable to care for her personal property and necessitating care in a nursing facility." (2a-3a).

Clearly the opinions below flagrantly disregard facts, law, and constitutional principle, and petitioner's claim for relief, and have so far departed from the accepted and usual course of judicial proceedings (as is shown by the Factual and Procedural Summaries above), that the reasons for granting review by a writ of certiorari are compelling.

Petitioner's challenge to these opinions, which is based on petitioner's 25-page argument in briefs in the court of appeals is succinctly summarized below, with rebuttal of the applicablity of *Parham*.

REASONS FOR GRANTING THE WRIT

I.

The opinion in *Parham v. J.R.* is no authority for the opinion below sought to be reviewed by this petition.

The Supreme Court's opinion in *Parham v. J.R.*, 442 U.S. 584 (1979), is completely irrelevant to the *Green* case, and does not even mention, much less reverse the cases on which petitioner relies: *Reynolds v. United States*, 98 U.S. 148 (1878); *Abington School District v. Schemp, Murray v. Curlett*, 374 U.S. 203 (1963); *Torcaso v. Watkins*, 367 U.S. 488 (1961); *Board of Education v. Barnette*, 319 U.S. 624 (1943).

Mrs. Green claims First Amendment protection from respondents

> "subjecting her, against her will, to a pseudo-medical and pseudo-scientific confessional faith, persuasion, or belief, and the practice thereof, known as psychiatry, psychology, mental hygiene, and similar names, and to a larcenous tyranny thereby, by physicians, including psychiatrists and a psychologist" (p. 8 of appellant's brief).

There is no such claim in *Parham*. Indeed, the First Amendment isn't even mentioned there.

A nominal plaintiff in *Parham v. J.R.*, a child not otherwise identified, then about seven years old, who can scarcely have found an attorney and brought suit on his own volition, either in fact or in law, is *non sui juris*. In contrast, Mrs. Green is a fully grown-up woman, actually and actively choosing her attorney, and by him, actually bringing this suit. She herself said "that if another psychiatrist came, she would not let him through the door."

Moreover, the question presented in *Parham* is specifically limited to "a minor child."

Judge Sweet disposed of Mrs. Green's First Amendment claim by finding that "the Supreme Court has never denied the constitutionality of psychiatric examination." This is certainly a misleading statement. No such matter has ever been before this Court in these words. All that *Parham* decided is what a due process requirement (no First Amendment issue was raised) to admit little children to a state institution is. It is to be doubted, moreover, that this Court will ever have before it such a matter *in these words*. They aren't the words of Mrs. Green's claim, and are legally meaningless words per se.

II.

Petitioner's First Amendment claim is supported by our constitutional history and current scholarship.

Mr. Chief Justice Waite in *Reynolds v. United States*, 98 U.S. 148, 164 (1878), wrote that the word "religion" is not defined in the Constitution, but held to be authoritive Jefferson's lucid language defining it in Virginia's statute on religious freedom, that was designed not to allow "the civil magistrate to intrude his powers into the field of opinion . . . ." It is from this "field of opinion," in which current scholarship, now well known to an informed public, includes psychiatry, etc. as a pastoral, not a medical practice, that petitioner seeks relief. ("Psychiatry" it should be noted was not invented until well over half a century after the First Amendment was adopted.)

More recently secular beliefs have been enumerated as falling under First Amendment protection, by Mr. Justice Black in *Torcaso v. Watkins, supra* at 495, as well as "other matters of opinion" by Mr. Justice Jackson, in *Board of Education v. Barnette, supra* at 642, who at 639, moreover, significantly noted that:

> "it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and the cases in which it is applied for its own sake . . . .Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard."

Statutory support for this claim is found in New York Education Law §6521, in which the definition of "medical practice" is limited to "physical condition."

Scholarly support for this claim is found in:

1. *The Standard Edition of the Complete Psychological Works of Sigmund Freud,* Vol. XX, pp. 252-256: his "relief" is not through catholic, protestant, or socialist community, but by a "secular pastoral worker" by "pastoral work."

2. Thom S. Szasz, professor of psychiatry, in *American Law: The Third Century,* (ed. by Bernard Schwartz), Hackensack, N.J., 1976, pp. 365-376: Psychoanalysis (and psychiatry) is not a branch of medicine, but religion.

3. E. Fuller Torrey, psychiatrist-anthropologist and National Institute of Mental Health official, in his *The Mind Game: Witchdoctors and Psychiatrists,* 1972 and *The Death of Psychiatry,* 1974: techniques of psychiatry in western culture are part of religion.

4. An especially prepared 11-page historical memorandum showing "mental hygiene" as institutional implementation of William James' "natural religion reform of church Christianity" (Appendix, *infra* at 9a).

III.

Important Issues Raised

This case if of the greatest importance, both for reasons of substance and procedure.

The substantive reasons generally summarized above are: redress for deprivation of constitutional rights of a senior citizen, as well as of a non-believer in a secular religion or cult of the psyche, whether called soul or mind (psychiatry); and redress for a victim of a pattern of racketeering. It is impossible to exaggerate the importance of these issues.

This is so if only from the viewpoint of senior citizens by their increasing number, and the increasing possibilities of their being victimized by predatory schemes in the guise of "conservatorship," as in this case. But there is also an increasing number of citizens of all ages (including many teachers) being victimized by other predatory schemes, all under color of law, and pseudo-medical or pseudo-scientific practices called psychiatry, mental hygiene, or similar names. Mrs. Green is included in both categories.

This opinion of the court of appeals must be reviewed by this Court in order to secure, in practice, elementary constitutional rights not only to Mrs. Green, but to all of the many victims, both actual and potential, who may be similarly aggrieved. At present, neither she, nor they, have or will have any redress. For this reason Mrs. Green's motion for an injunction pending appeal was supported by sworn affidavits of fact and principle, included therein, by Mrs. Reheis, Mrs. Buck, and Mr. Plotkin. (Others were present and ready to so testify at a district court hearing, but were not heard.) Significantly, Judge Mansfield granted a motion to strike a supplemental appendix in the court of appeals that included these affidavits.

The categories of citizens so victimized by actual or attempted "lettre de cachet" include public officials. For the United States to remain a country ruled by law, this opinion of the court of appeals must be reviewed by this Court. The time to prevent "psychatric" damage to the rule of law from becoming catastrophic, and from which neither lawyers nor judges could hope to escape, is now, by granting the writ of certiorari.

From the beginning of World War I, the number of members of the American Psychatric Association has increased from a mere 500 to about 30,000 (doubling every decade). Their victims, baselessly and fraudulently alleged to be "mentally ill," are increasing as rapidly.

The Nazi cult of racism, which had such staggeringly devastating consequences, was only *one* example of the perniciousness of pseudo-science; Americans are now experiencing another, called "mental," or "mental hygiene," or "psychiatric," or similar names.

It is a matter of record that in a recent public announcement the Hon. Irving Kaufman, who until now had assignment authority, as Chief Judge of the Court of Appeals for the Second Circuit, arbitrarily dismissed as "irrational" the growing number of plaintiffs denied such redress in his court.

The *Parham* decision is now being used to put the stamp of approval of this Court on predatory "psychiatry" and give unlimited license to its practices under color of law.

Procedurally, this opinion of the court of appeals is equally repugnant to the Constitution by denying Mrs. Green counsel of her choice, in violation of due process of law, by *ex post facto* invocation of *Parham* to penalize her attorney, and by making those whom it designates as "psychiatrists" into a privileged class, bound by no law, and beyond the reach of any legal redress.

Petitioner's attorney is being subjected personally to "double costs" for bringing petitioner's action and appeal. This is being done by *fiat*, without notice, much less a hearing. The court of appeals has thereby usurped a power not lawfully conferred on it. Its jurisdiction, to hear and decide appeals, cannot be construed to deprive Mrs. Green and her attorney of all legal standing, by penalties. By arbitrarily calling "frivolous" a constitutional claim of the greatest importance, the Hons. Waterman, Moore and Mansfield undeniably further demonstrated their own personal bias and prejudice.

Clearly, by this opinion and the procedures it discloses, the court of appeals has departed from the accepted and usual course of judicial proceedings; it has also, by its misapplication of *Parham*, decided a constitutional question of the greatest importance that has not been, but should be, settled by this Court. Under Rule 19, this Court should therefore review the court of appeals opinion.

CONCLUSION

Petitioner respectfully prays that the petition for a writ of certiorari be granted.

Respectfully submitted,

s/ GENE CRESCENZI
Attorney for Petitioner

APPENDIX I - OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED JANUARY 8, 1980

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED JANUARY 8, 1989

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the eighth day of January, one thousand nine hundred and eighty.

Present: HONORABLE STERRY R. WATERMAN,

HONORABLE LEONARD P. MOORE,

HONORABLE WALTER R. MANSFIELD,

Circuit Judges

ANNA STANTON GREEN,

Plaintiff-Appellant,

-against

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN, P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, Commissioner of the Department of Health, Education and Welfare, and THE UNITED STATES POST OFFICE and THE NEW YORK BANK FOR SAVINGS,

Defendants-Appellees.

Docket No. 79-6031

Appendix 1

Anna Stanton Green, 93 years old, through Gene Crescenzi, Esq., appeals from orders and judgments of the District Court for the Southern District of New York, entered on January 11, 1979, and July 3, 1979, by Judge Robert W. Sweet, dismissing her complaint, which had been instituted on her behalf by Mr. Crescenzi, claiming that the defendants conspired in violation of 42 U.S.C. §1983 and §1985 as well as of other federal statutes, to violate her First Amendment, Due Process, and Thirteenth Amendment rights in having appellee Justice P. Raymond Sirignano of the New York State Supreme Court, Westchester County, appoint appellee Bartholomew as conservator of her estate pursuant to N.Y. Mental Hygiene Law, Arts. 77, 78, 79 (McKinney's 1978). Appellant's principal claim is that the use of services and testimony of licensed psychiatrists to determine whether a conservator was needed violated her right under the Establishment Clause to free exercise of conscience since it amounted to "soul-curing" and "semantic trickery," subjecting her to the "rites of a cult or religion," as a result of which she has been placed in involuntary servitude and deprived of her property without due process of law. It is claimed that appellees, through ex parte procedures, proceeded against appellant by "gross chicanery." Injunctive and declaratory relief plus $1 million damages are sought.

A careful review of the record, briefs and oral argument disclose that the claim is frivolous and completely without merit. The judicial use of psychiatric examinations and opinion in determining a person's mental fitness, capacity and need for treatment or protective and institutional care is well recognized and widely accepted, provided the subject is accorded due process. See, e.g., *Parham v. J.R.*, ____U.S.____ 47 U.S.L.W. 4740 (June 20, 1979). Appellant's due process rights were fully protected by the appellees in the present case in accordance with Article 77 of the New York Mental Hygiene Law. Personal notice of the proposal for appointment of a conservator was given to appellant and her closest relatives. John M. Perone, Esq., was appointed as guardian ad litem to protect her interests.

Appendix I

Appellant was examined by a *court-appointed* psychiatrist, appellant [sic] Dr. Harry Moorhead, who confirmed the view of Dr. Stuart Pines, that appellant is suffering from a deteriorating mental condition rendering her unable to care for her personal property and necessitating care in a nursing facility. After holding evidentiary hearings in which witnesses were examined and cross-examined, the state court (per Justice Sirignano) found that the need for a conservator was established "by clear and convincing proof." He then appointed appellant Bartholomew, her son-in-law, as conservator, and approved the placement of appellant in a Peekskill nursing home.

The orders and judgments of the district court are affirmed, substantially for the reasons stated by Judge Sweet in his opinions dated January 11, 1979, May 4, 1979, and June 12, 1979. In view of the frivolousness of this proceeding, the reckless misuse of process by appellant's counsel, including his attempted invocation of federal criminal anti-racketeering statutes, 18 U.S.C. §§1951(b)(2), 1961, 1962, 1964, and his intemperate characterization of defendants' conduct as "larcenous tyranny," "semantic trickery," "gross chicanery," "larceny," "larcenous conspiracy," a "pattern of racketeering," and "extortion," all of which deserves reference to the Bar Association's Grievance Committee for appropriate disciplinary action, see Amer. Bar Assn. Code of Judicial Conduct, Canon 3B(3), it is further ordered that double costs shall be assessed against appellant pursuant to F.R.A.P. 38, to be paid by her counsel Gene Crescenzi pursuant to Title 28 U.S.C. §1927. *Acevedo v. I.N.S.*, 538 F.2d 918 (2d Cir. 1976).

s/ Sterry R. Waterman, per wrm
Sterry R. Waterman, U.S.C.J.

s/ Leonard P. Moore
Leonard P. Moore, U.S.C.J.

s/ Walter R. Mansfield
Walter R. Mansfield, U.S.C.J.

APPENDIX II — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DENYING REHEARING FILED MARCH 4, 1980

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Fourth day of March, one thousand nine hundred and eighty.

Present: HON. STERRY R. WATERMAN, C.J.

HON. LEONARD P. MOORE, C.J.

HON. WALTER R. MANSFIELD, C.J.

Circuit Judges

79-6031

ANNA STANTON GREEN,

Plaintiff-Appellant

v.

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, Commissioner of the Department of Health, Education and Welfare, and THE UNITED STATES POST OFFICE and THE NEW YORK BANK FOR SAVINGS,

Defendants-Appellees

Appendix II

A petition for rehearing having been filed herein by counsel for the Appellant-Anna Stanton Green.

Upon consideration thereof, it is

Ordered that said petition be and hereby is DENIED.

s/ A. Daniel Fusaro
A. DANIEL FUSARO,
Clerk

APPENDIX III - ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DENYING SUGGESTION FOR REHEARING FILED MARCH 4, 1980

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Fourth day of March, one thousand nine hundred and eighty.

79-6031

ANNA STANTON GREEN,

Plaintiff-Appellant

v.

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, Commissioner of the Department of Health, Education and Welfare, and THE UNITED STATES POST OFFICE and THE NEW YORK BANK FOR SAVINGS,

Defendants-Appellees

A petition for rehearing containing a suggestion that the action be reheard en banc having been filed herein by counsel for the appellant, and no active judge or judge who was a member of the panel having requested that a vote be taken on said suggestion,

Appendix III

Upon consideration thereof, it is

Ordered that said petition be and hereby is DENIED.

s/ IRVING R. KAUFMAN
Chief Judge

APPENDIX IV — RELEVANT STATUTES

§77.01 Persons for Whom a Conservator of the Property may be Appointed

"The supreme court, and the county courts outside the city of New York, if satisfied by clear and convincing proof of the need therefor, shall have the power to appoint one or more conservators of the property (a) for a resident who has not been judicially declared incompetent and whom by reason of advanced age, illness, infirmity, mental weakness, intemperance, addiction to drugs, or other cause, has suffered substantial impairment of his ability to care for his property or has become unable to provide for himself or others dependent upon him for support, or (b) for a nonresident of the state for whom a conservator of his property, by whatever name designated, has been appointed pursuant to the laws of any other state, territory, or county in which he resides. Such person for whom a conservator is appointed is hereinafter designated as the 'conservatee.'

If the conservatee is a patient in a hospital or school, the officer in charge of such hospital or school and the mental health information service shall have the right to be heard in all phases of the proceedings."

§6521. Definition of practice of medicine

"The practice of the profession of medicine is defined as diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physicial condition."

APPENDIX V - MEMORANDUM TO THE COURT OF APPEALS ON THE EXCLUSIVELY RELIGIOUS AND NON-MEDICAL PRINCIPLES AND PURPOSES OF MENTAL HYGIENE

MEMORANDUM ON THE EXCLUSIVELY RELIGIOUS AND NON-MEDICAL PRINCIPLES AND PURPOSES OF MENTAL HYGIENE

By Norman A. Plotkin D.U.P. (Docteur d'Universite de Paris [Sorbonne])

Note: This memorandum briefly summarizes part of my research into the background of what is called psychiatry, psychology, mental hygiene, and similar names. From the results of this research I selected those notes that would be particularly useful in testimony that I prepared to give on this subject on June 8, 1979, before the Hon. Robert W. Sweet, in the United States District Court for the Southern District of New York, in Green v. Bartholomew, 78 Civ. 3994. Since no testimony was heard there, I have extracted from these notes the following brief quotations and comments to show the exclusively religious and non-medical principles and purposes of "mental hygiene," including its name, aim, concepts, movement, organization, and personnel. This memorandum was prepared at the request of GENE CRESCENZI, attorney for ANNA STANTON GREEN, to support her application for relief in the United States Court of Appeals for the Second Circuit. N.A.P.

PART I - WILLIAM JAMES, PHILOSOPHER OF NATURAL RELIGION

As professor of philosophy at Harvard University, William James acquired world renown for his own philosophic concepts which he always expounded in his lectures and writings. So far from questioning that they were religious concepts, he himself called them "natural religion." These views were widely shared

by many of the clergy here and abroad, who represented a liberal Christian trend that was considered to be modern and enlightened, and necessary to reform what he called "church Christianity." He himself was the son of a Swedenborgian theologian, a follower of a well known trend then. William James's "natural religion" obviously reflects that influence.

William James had studied at German universities, where a subject entitled "religion and psychology" was then a standard field of study, and helped to recreate it here, publishing *Principles of Psychology* in 1890. A dozen years later he delivered a series of lectures at Edinburgh known as the Gifford Lectures on Natural Religion. These were then published, in 1902, as *Varieties of Religious Experience, A Study in Human Nature.* Although this book is now in widespread use in introductory college courses, and is considered a classic, it is unfortunately not usually given any attention for its own evidentiary value as a source of an important trend in American social-religious history, the impact of which is so painfully visible now in the Green and related cases. That James's book has such evidentiary value is demonstrated below.

These brief quotations from *Varieties of Religious* Experience,* with appropriate comments, are the result of examining this book as a social document. Only one conclusion can emerge from such an examination. It is that "mental hygiene," later called "mental health," is the formal institutionalization of "natural religion," and is totally unrelated to medicine, medical concepts, or bona fide medical or "health" practice. It was conceived as part of James's religious exposition that was succinctly summarized in an "Introductory note on the author of *Varieties of Religious Experience*" as follows:

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* All page references are to the 1936 Modern Library Edition of *Varieties of Religious Experience,* by William James.

Appendix V

> "These lectures, collected in this volume, have since become famous as the standard scientific work on the psychology of the religious impulse." — p.v.

1. James's "Religion and Neurology."

Lecture I is entitled "Religion and Neurology." But "neurology" as used by William James here obviously has no medical meaning. It was used purely as positivist or positivist-influenced jargon, which was then in greater supply than what is now considered to be bona fide neurology. James coupled the word "neurology" quite properly, for him, with religion, just as he properly coupled "psychology" with the religious impulse, because he uses both terms "neurology" and "psychology" to express religious concepts.

In the same way, and for the same reason, he uses other words that although they might appear to be "medical" in another context, are clearly religious terms here:

> "Few of us are not in some way infirm, or even diseased; and our very infirmities help us unexpectedly. In the psychopathic temperament we have the emotionality which is the *sine qua non* of moral perception; . . ." p. 26.

William James is obviously preaching religion here, not medicine. Yet it is by taking similar semantic liberties that current practices no more medical than James's use of "neurology," "infirm," or "diseased," succeed in their deceptive claim to be "medical." In 1966, for example, the Court of Appeals of New York heard an appeal from a group of M.D.'s, constituting a branch of the American Psychiatric Association; they called "neuropsychiatric" their own practice of psychoanalysis, thus claiming legal monopoly privilege for it as

"medical practice." (See *Nassau Neuropsychiatric Society Inc. v. Adelphia Univ. et al.*, 275 N.Y.S. 2d 511; 18 N.Y. 2d 370. Notwithstanding that dismissal of their claim was affirmed, and that official definition limits "practice of medicine" to "physical condition" (and that Freud called psychoanalysis "pastoral") such "medical" semantic deception persists, as the present litigation shows.

2. *James's Religion of Healthy-Mindedness, Mind-Cure, and Mental Hygiene.*

Lectures IV and V are entitled "The Religion of Healthy-Mindedness." In these lectures, William James defines and explains "healthy-mindedness," "mind-cure" (also called the religion of mind-cure), and "mental hygiene" in the most explicit religious or theological language possible:

> ". . .how impossible it is not to class mind-cure as primarily a religious movement. Its doctrine of the oneness of our life with God's life is in fact quite indistinguishable from an interpretation of Christ's message which in these very Gifford lectures has been defended by some of your very ablest Scottish religious philosophers." p. 104.
>
> ". . . mind-cure has developed a living system of mental hygiene* which may well claim to have

* Here is the very term, "mental hygiene," that appears a half dozen years later in the mental hygiene movement founded with William James's influential and financial support at the residence of Anson Phelps Stokes, Episcopal chaplain of Yale University. A few years after that this movement resulted in a consolidated executive department in the State of New York named "Mental Hygiene" with a newly enacted "Mental Hygiene Law" as its authority.

> thrown all previous literature of the *Diatek der Seele* * into the shade." p. 105.
>
> "The ideas of Christian churches are not efficacious in the therapeutic direction today . . .[James disagrees that popular Christianity] has it all there in mental therapeutics, and has it in its best form . . . popular Christianity does absolutely *nothing*, or did nothing until mind-cure came to the rescue." p. 110-111.
>
> "The mind-cure with its gospel of healthy-mindedness has come as a revelation to many whose hearts the church Christianity had left hardened." p. 112.

It is impossible to state more plainly that healthy-mindedness, mind-cure, mental therapeutics, soul dietetics, and mental hygiene are all terms and concepts of religion, not of medicine. This religion, professed by William James, was shortly to be institutionalized first by a "movement," and soon afterward by legislative enactment.

3. *James's "Sick Soul"*

Lectures VI and VII are entitled "The Sick Soul." In these lectures William James defines and explains the "sick soul" and how it contrasts with "healthy-mindedness." Here is the same combination of the biological-medical term "sick" with a religious term, "soul." But here the device is so easily penetrated that the briefest quotation will suffice:

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* This may be translated as *soul dietetics*, or a balanced diet for the soul. This well illustrates how biological health concepts that were then new discoveries were borrowed to support what were supposed to be newly discovered concepts of religion.

Appendix V

"Evil is a disease." p. 125.

Despite the medical-sounding term "disease," the meaning here is clearly religious, or theological, and could not possibly be given a bona fide medical meaning.

It is just as impossible to call "sick souls" anything but a religious or theological epithet. It is inconceivable to construe this term as a medical diagnosis. The same is just as true for what James contrasts as "sick souls" and "healthy mindedness, in the following passage:

> ". . . we must address ourselves to the unpleasant task of hearing what the sick souls, as we may call them in contrast to the healthy-minded, have to say . . ." p. 133.

But this obvious metaphorical usage in William James's writings was soon to be transformed into a semantic duplicity institutionalized in law, in which religious essence was covered over with what was called literally, but deceptively, hygiene, health, and medical practice.

4. *James's "Mental Hygiene" Religious Concepts Summarized*

An examination of William James's philosophical exposition in his famous book thus shows that he openly advocated natural religion in the form of healthy mindedness, mind-cure, mental therapeutics, soul dietetics, and mental hygiene in order to cure "sick soul." (This general concept was also sometimes called "neurology.")

These religious uses by James of a number of medical-sounding terms are, of course, consistent with his own background and the historical background of medicine and religion. James first studied medicine at Harvard (although he

never practiced it) before he went abroad to study religion and psychology. Harvard, like all old universities, was originally a church school of divinity and theology. The original three church university disciplines of theology, law, and medicine were regarded merely as separate branches of a common core. And the medicine that James studied had not yet progressed to a much different level.

Moreover, that general trend in theology in which William James emerged as such an eloquent spokeman was also manifested then in other ways that expressly sought to retain and revive the old religion-medicine bond. This was distinctly expressed in the *Encyclopedia of Religion and Ethics.** Significantly, this encyclopedia began publication in 1908, the same year that the "Mental Hygiene" movement was officially founded. The article in this encyclopedia entitled "Psychotherapeutics," by W.H. Rivers, President of the Anthropological Association of the British Association, states that:

> "The great interest of modern trends in psychotherapeutics is that at this late stage of social evolution they seem to be again bringing religion and medicine into that intimate relation to one another that existed in their early history."

PART II - THE MOVEMENT CALLED "MENTAL HYGIENE"

A half dozen years after the publication of *Varieties of Religious Experience,* the mental hygiene movement was founded, with William James leading the way, and even contributing the first thousand dollars. In view of his writings

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* *Encyclopedia of Religion and Ethics,* Charles Scribner, New York and Edinburgh, 1908-1927.

this comes as no surprise. Its larger significance should not be overlooked. Like Swedenborg's "New Jerusalem" movement, James's "natural religion," or "mental hygiene," was to spread far and wide. This development was neither unintended nor unexpected, but openly planned, and well-financed.

In scarcely a decade this mental hygiene movement spread over the United States, and internationally. "Mental hygiene" or "mental health" became a government concern. Its attainment was made an official goal, legislatively enacted almost everywhere. It was officially supported by a vast ever growing, heavily funded bureaucracy, operating through a network of mental health agencies, bureaus, offices, departments, centers, clinics, church social services, and so forth.

The mental hygiene movement required "medical" cover in order to obtain government support and a more popular image (since James's natural religion appealed only to intellectuals); but the movement never lost its essentially Jamesian concepts and purposes. In view of its origins, it is not surprising that this movement and its goal bear a striking resemblance in concepts and language to what William James so eloquently set forth in *Varieties of Religious Experience.* Aside from a few semantic modifications, and the omission of the more overt references to religion, the resemblance is total.

But the latter omission and semantic changes signify only this movement's accomodation to a "public health" image, the key to its success. Thus "sick soul," as the opposite of "healthy mindedness" was replaced by "mental illness" as the opposite of "mental health;" and "mind-cure" was replaced by the more complex-sounding "mental therapy" and "mental hygiene." So this mental hygiene movement promoted mental health through mental (or psycho-) therapy in order to cure mental illness (this new word was never explicitly defined, but obviously implied the opposite of mental health). But it is otherwise essentially indistinguishable for William James's "natural religion."

Appendix V

1. *James and Beers and the Movement's Founding*

The route from William James to the mental hygiene movement was short and direct. The link was Clifford Whittingham Beers, official founder of the movement. After William James read the manuscript of Beers's meager autobiographical account, *The Mind That Found Itself,* and praised it, it was soon published. Simultaneously, the first Mental Hygiene association was founded in 1908, at Yale, and ever since Beers's book has been its "revered" promotional piece, and always kept in print, as (as indeed it is called) its "bible."

It would be hard to find two more dissimilar men than James and Beers collaborating in founding any movement. James was then a world famous intellectual, approaching the end of his life. Beers was a young man whose only distinction then, if it may be called that, was that he had jumped out of a window, for unexplained causes, breaking his ankles, and was then confined for a time in a sanitarium for what was then called "lunacy." This book by Beers (he only wrote one) is his account of what happened to him then, and supposedly of his thoughts. He wrote it after he recovered, or was reformed. Why the influential James caused it to be published is an interesting, although perhaps easily answered, question.

Although he had had the benefit of a Yale undergraduate education, Beers was no intellectual. He was a business man, and rather a Bible-thumper (the combination was not uncommon then) judging by this concluding passage of his book:

> "What have I to do with thee, Jesus,
> Thou Son of the Most High God, that
> Thou torment me not."

The passage is taken verbatim from the Gospel According to St. Mark, 5:3-7, St. James Version. Perhaps it was this feature that

was so appealing to James. Perhaps, too, the fact that (according to a biographical account) James himself once had suicidal thoughts, as a young man, explains why he so warmly embraced Beers's cause.

But the hard fact remains that Beers was shortly to attain distinction as a big money raiser, obtaining ultimately millions of dollars for his Mental Health Association and movement. Among the first uses of this money was the financing of the first office and staff of what was then the American Medico-Psychological Association, re-named within a few years as the American Psychiatric Association. This Association rewarded Beers for the money by making him an honorary member — its singular non-physician, non-psychiatrist member then.

When Beers died in his mid-sixties, far from home, in the midst of World War II, he was neither a soldier nor a war casualty. (He died in a fashionable "short term" psychiatric hospital known for its alcoholic ward.) But among the fruits of that war and its aftermath were Congressional appropriations for "mental health" of a size that vastly exceeded even Beers's wildest dreams.

2. *Seven Decades of "Mental Hygiene."*

In the seven decades that have passed since the founding of the mental hygiene movement, prominent clergymen have always been its most articulate and visible advocates. These include: Anson Phelps Stokes, first as Episcopal Chaplain of Yale University, and later as Massachusetts Episcopal Bishop; William Lawrence, Massachusetts Episcopal Bishop; James Cardinal Gibbons, Roman Catholic Archbishop of Baltimore; Harry Emerson Fosdick, the interdenominational Riverside Church pastor and Union Theological Seminary professor; and

Felix Adler*, founder and head of the Ethical Culture Society. But its only physician-supporters of note are those practicing the non-medicine of psychiatry.

The mental hygiene movement even defines its "helping professions" to include the clergy, along with law enforcement personnel** — i.e. "practitioners" of social behavioral control. None of its leaders have ever been prominent in any medical or scientific work, such as cardiology. But at least one attained some political prominence: Wilbur Cross, who for years was one of the Mental Health Association's leaders, while professor of English literature at Yale University (Yale's tie to the movement persisted), was elected Governor of Connecticut in 1930.

While Governor of Connecticut, the former Yale literature professor edited *Twenty-Five Years After****, a collection of letters promoting mental hygiene principles and purposes. They are similar to those in the "Supplement" to the *Mind That Found Itself* (that "Supplement," occasionally changed from edition to edition, constitutes about half of Beers's book). In these letters, chosen as promotional pieces,"mental hygiene" is revealed as having the same religious purpose found in William James's writings, although much less eloquently articulated. One supporter said it plainly, if crudely, twenty-five years after, as follows:

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* Felix Adler as a young man, was sent to Germany, by his father, then New York's Temple Emanu-El's eminent rabbi, for a higher education to prepare him to succeed to that pulpit (a succession then virtually taken for granted).

** See: Nina Ridenour, *Mental Health in the United States, A Fifty Year History*, Harvard University Press, Cambridge, Mass., 1961. p. 82.

*** *Twenty-Five Years After*, edited by Wilbur L. Cross, Doubleday, Garden City, N.Y. 1934.

Appendix V

> "How quickly the Gospel of Mental Hygiene has spread!"*

That the spreading of this gospel is what "mental hygiene" is all about is undeniable. And that it is succeeding can easily be measured financially, as well as in other practical ways. Just one organizational component of this movement, the American Psychiatric Association, boasts, in its current directory, at p. ix, that:

> "Over the course of a decade, the Association's budget has grown from less than $100,000 to over $6,000,000 . . ."

So William James's natural religion, larded with medical-sounding terms, including "mental hygiene," was expanded into Beers's big money gospeleering "mental hygiene" movement. Although semantically accomodated to a "public health" image to acquire police power and public financing, the "mental hygiene" or "mental health" establishment requires little probing to reveal its true religious and theological nature, and to show that it is in no way a bona fide medical or health practice.

New York, N.Y., July 30, 1979

s/ Norman A. Plotkin
NORMAN A. PLOTKIN

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* *Ibid.*, p. 356.